

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6766

Petition of the Vermont Department of Public     )  
Service for approval of amendments to the     )  
Vermont Telecommunications Equipment     )  
Distribution Program     )

Order Entered: 10/11/2002

**I. INTRODUCTION AND OVERVIEW**

In accordance with 30 V.S.A. § 218a, the Public Service Board ("Board") must establish by rule or order a telecommunications equipment grant program to assist deaf, deaf-blind, hearing impaired or speech impaired persons to communicate by telephone. In an Order dated October 8, 1998, in Docket 6131, the Board established the Vermont Telecommunications Equipment Distribution Program ("VT-EDP") and approved the Program Standards as proposed by the Vermont Department of Public Service ("Department"). The 2002 session of the Vermont General Assembly amended 30 V.S.A. § 218a in Act 93. Accordingly, changes to the Program Standards are required to conform the Program Standards to the newly enacted law. On September 4, 2002, the DPS filed a petition asking the Board to approve proposed amendments to the VT-EDP Program Standards. With that petition was the supporting prefiled testimony and exhibits of Deena Frankel, Director for Consumer Affairs & Public Information, of the Department, and an amended version of the VT-EDP Program Standards.

No one has asked for intervention in this docket. Ms. Frankel's testimony has not been contested by anyone. Accordingly, her testimony is admitted into evidence as if given orally.

We find that the amendment proposed by the Department to the VT-EDP Program Standards are in accordance with the statutory provisions governing this program, and should be adopted.

## **II. FINDINGS OF FACT**

1. 30 V.S.A. § 218a(e) requires the Department to propose for Board approval a telecommunications equipment grant program to assist deaf, deaf-blind, hearing impaired or speech impaired persons to communicate by telephone. The Board is to establish the program by rule or order. 30 V.S.A. § 218a(e).

2. By Order dated October 18, 1998, in Docket 6131, the Board established the VT-EDP and approved the Program Standards as proposed by the Department.

3. Act 67 of the 2000 session of the Vermont General Assembly amended 30 V.S.A. § 218a in ways that required amendments to the Program Standards approved by the Board in Docket 6131. Amendments conforming the VT-EDP Program Standards to the statutory amendment were proposed by the Department, and approved by the Board in Docket 6412.

4. The 2002 Vermont General Assembly further amended 30 V.S.A. § 218a through the provisions of Act 93. Accordingly, changes are now needed in the VT-EDP Program Standards to conform them to Act 93.

5. Act 93 of the 2002 General Assembly made four changes to 30 V.S.A. § 218a:

- (1) It increased the income threshold for program eligibility from 175 percent of the federal poverty standard to 200 percent of the federal poverty standard.
- (2) It changed the assumed family size for purposes of determining which income limit applies to an applicant from two to six.
- (3) It removed the cap on the maximum per-person benefit, which had been set at \$400.
- (4) It required the Board to consider in adopting program guidelines "appropriate limits on per-person benefit levels based on the equipment needed and the income level of the applicant."

Act 93 of the 2002 General Assembly. Frankel pf. at 5.

6. The recommended changes to the VT-EDP standards were developed by the Department in consultation with the equipment program advisory committee. The advisory committee, which is required by the existing program guidelines, consists of: a representative of the Department of Aging and Disabilities, René Pellerin; a representative of Verizon New

England Inc., d/b/a Verizon Vermont, Douglas Dapice; a representative of the Vermont Assistive Technology Project, Julie Tucker; and a representative of the Council of Vermont Elders, Sally Schober (who holds the seat reserved for a representative of hard-of-hearing consumers). In addition, the Vermont Center for Independent Living ("VCIL"), which has the contract to administer the program, staffs the advisory committee and provides input on the needs of persons with disabilities and on program administration. VCIL representatives who work with the committee include: Michelle Abare, Deaf Peer Advocacy Counselor; Laura Callahan, Equipment Program Manager; Janet Dermody, Program Director; and Karin Nissen, Equipment Program Specialist. In addition to the committee's input, the Department also worked with the Department of Aging and Disabilities ("DAD") to obtain agreement on the waiver processes which are an important component of the guidelines. No member of the advisory committee objected to the final draft proposal from the Department. Frankel pf. at 4–5.

7. Taken section by section, the Program Standards are being amended as follows:

Section A, Scope and Authority: The proposed changes in Section A are to conform the section to the amendments to 30 V.S.A. § 218a, by removing the reference to the now-deleted cap on benefits, and by recognizing that part of the income guidelines are now established in the guidelines, rather than the law, based on latitude provided by the statute.

Section C, Eligibility: The change in Paragraph (1) clarifies that "audiologist" has the meaning established in the relevant professional regulation statute, 26 V.S.A. § 3281(1), which defines audiologist as "any person who has at least an M.A. or M.S. degree in audiology, at least 300 hours of supervised practical training, and is eligible for the American Speech-Language-Hearing Association Certificate of Clinical Competence in audiology, and provides services to the public under any title incorporating the terms audiology, audiologist, audiological, hearing clinic, hearing clinician, hearing or aural rehabilitation, or

hearing specialist." This change is not the result of Act 93, but rather is intended to clarify who can provide certification of disability required by the equipment distribution program. This clarifies an issue that has arisen in program administration.

Paragraph (2) implements an amendment to conform the income eligibility criteria to the statutory amendment. The new standard is 200 percent of the federal poverty standard, increased by Act 93 from 175 percent. Act 93 also permitted an increase in the presumed family size for purposes of determining which income limit applies to an applicant. The law previously set the presumed minimum family size at two, meaning a household of either one or two persons was presumed to have two persons for purposes of determining the maximum household income below which a person was eligible for benefits.

Although Act 93 permitted the minimum presumed size to increase to six persons, the recommended revisions do not adopt the complete latitude available under the statute in the normal course of the program. The revision retains the current presumed household size of two, meaning that an individual applicant can continue to use the income thresholds for a family of two. Beyond two people, the income eligibility guidelines use a sliding scale based on actual family size. Under this amendment, eligibility for a person in a household of three members is 200 percent of the federal poverty standard for a family of three, eligibility for a person in a household of four members is 200 percent of the federal poverty level for a family of four, and so forth.

Paragraph (2)(c) conforms the percent of poverty threshold to Act 93 by increasing the multiplier from 175 percent of poverty to 200 percent of poverty.

Paragraph (4) is expanded to include a new provision regarding reapplication. This provision is not a result of changes made by Act 93, but is responsive to experiences with program administration. The existing guidelines restrict anyone in the household from applying for program benefits if any person in the household has received benefits within the previous four years. The recommended guideline revisions create an exception to the four-year waiting period if a person in the same household as the recipient is eligible for benefits and requires completely different adaptive equipment than that which has already been provided by the program as a result of a different disability. The waiting period is not a statutory requirement. It was originally recommended to prevent households from acquiring through program funds duplicate pieces of equipment which served the same purpose. The proposed revision is therefore permitted by law and remains consistent with the original purpose of the waiting period while enabling the program to address unmet needs.

Paragraph (6) is an addition to the guidelines to accommodate those people whose income is too high for eligibility under the provisions of Paragraph (2), but is below the maximum level established by Act 93. This group consists of people in households from one to five persons whose income is above the sliding scale and below \$48,520, the threshold amount for a family of six. The proposed Paragraph (6) establishes a waiting list for these individuals. If funds are available at the end of the fiscal year, these individuals' applications may be funded on a first-come, first-served basis. The authority to establish the proposed mechanism for serving upper income applicants is included in the language of Act 93 which requires the Board to consider the "appropriate limits

on per-person benefit levels based . . . the income level of the applicant." The recommended mechanism is simple to administer and assures priority to lower income applicants.

Section D, Provision of Benefits: Paragraph (1) includes an amendment to correct a typographical error by striking the redundant word "already."

The revision of Paragraph (3) conforms the language of this section to the addition of waiver provisions which will be detailed in Section E below.

The revision of Paragraph (4) implements the change made by Act 93 which removed the \$400 cap on per-person benefits. The revision will reset the cap at \$750 per person. This amount was based on a market survey of prices of popular TTYs with features that are most needed by applicants. This survey showed that the vast majority of needs of the target group can be met within a \$750 cap. Since applicants can only apply for the equipment they need to connect to the telephone network, there is little danger the increase in the cap will result in participants "gold-plating" their requests. In fact, many program applications already fall well below the existing \$400 cap because the applicants need such items as amplified phones which cost less than \$400. By changing the cap to \$750, the program can accommodate most applicants' needs without needing to establish a complex schedule of maximums based on disability or equipment need. The authority for the Board to set the cap at \$750 and to establish a waiver process for those with needs for more costly equipment derives from the language in Act 93 which requires the Board to set "appropriate limits on per-person benefit levels based on the equipment needed . . ."

The revisions include modifications to Paragraph (5) to establish a ten-percent hold back of benefit funds (as distinct from administrative funds) to cover appeals and waivers. Fifteen days from the end of the fiscal year, if these funds have not been expended to cover any successful appeals, the funds would be expended to meet the needs of people on the program waiting list in accordance with Section C, Paragraph (6). In addition, the changes to this section shift the application dates for the program from a calendar year to a fiscal year-basis to be consistent with the way in which the program is contracted to an outside vendor.

Section E, Rights to Waiver and Appeal. The revisions to this section add waivers to the already existing appeal procedures and clarify ambiguous language that was previously approved. The new waiver provisions, like the already-existing appeals, go to the Commissioner of the Department of Aging and Disabilities for his or her review and determination.

Paragraph (1)(a) retains the appeal procedure and criteria already included in the existing guidelines, but reorganizes the presentation to conform to the revision of the section. The section has also been amended to clarify that the Commissioner of Aging and Disabilities may grant the relief requested in the appeal, as opposed to the former language that referred to granting the appeal. All appeals must be heard. The new language clarifies the intent that it is up to the Commissioner to decide the merit of the appeal.

Paragraph (1)(b) adds a provision to enable the Commissioner to waive the four-year waiting period for a previous benefit recipient to reapply. The criteria for granting a waiver are based on certain risks to the applicant in the absence of program benefits and/or certain changes in the applicant's circumstances.

Paragraph (1)(c) permits the Commissioner to waive the \$750 cap on the per-person benefit if the applicant requires equipment which exceeds the cap in order to connect to the publicly switched network.

Paragraph 2 establishes that waivers and appeals are funded first from any available regular program funds, and then, if those funds are exhausted, from the ten percent hold back established in Section D.

Frankel pf. at 5–11.

### **III. DISCUSSION**

30 V.S.A. § 218a(e) mandates that the Department propose and the Board establish by rule or order a telecommunications equipment grant program to assist deaf, deaf-blind, hearing impaired or speech impaired persons to communicate by telephone. The Board originally established the VT-EDP and the Program Standards in Docket 6131, Order entered 10/8/98. The 2000 General Assembly amended the statute, and amendments to the Program Standards had to be made. Docket 6412, Order entered September 9, 2000.

Now the 2002 General Assembly, through Act 93, has further amended the statute, requiring conforming amendments to the Program Standards. The Department's proposed changes to the Program Standards have addressed these legislative changes, and also, in a few instances, amended the Program Standards for clarification purposes and to account for the experiences of the VT-EDP to date. The analysis for each proposed amendment to the VT-EDP Program Standards has been documented in the testimony of Ms. Frankel, Director for Consumer Affairs & Public Information for the Department, which we accept.

These amendments were reviewed by not only Department staff, but also by many people who are knowledgeable about the VT-EDP as a program and its constituents. The consultation included the equipment program advisory committee, which apparently includes representatives of all persons interested in this topic. No member of the advisory committee objected to the final draft proposal from the Department. This, and our desire to see the new guidelines in place as soon as possible, gives us confidence to rely on the uncontested DPS testimony and



accompanying exhibits without noticing this matter for further hearing.<sup>1</sup>

We conclude that the amendments as presented by the Department are necessary, reasonable, and equitable. The Board has taken into account the following factors in evaluating the amendments:

- (1) prior benefits;
- (2) degree of functional need;
- (3) income;
- (4) number of applicants;
- (5) disposition of equipment upon change of residence;
- (6) appropriate limits on per-person benefit levels based on the equipment needed and the income level of the applicant.

The amendments bring the VT-EDP Program Standards into compliance with the recent statutory changes made by the General Assembly. In addition, the manner in which the amendments have been incorporated into the Program Standards have allowed for simplicity of administration. The annual funding cap of \$75,000 means that, in order to maximize the amount of benefits to eligible applicants, administrative costs must be controlled strictly. The amendments also take into consideration prior benefits received, degrees of need, income of applicants, the number of applicants, and the appropriate limits on per person benefit levels based on equipment needed and the income level of the applicant.

#### **IV. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Vermont Public Service Board that:

1. The findings and recommendations of the Hearing Officer are adopted.
2. The proposed amendments to the Vermont Telecommunications Equipment Distribution Program Standard are approved as presented by the Vermont Department of Public Service. A redlined copy of the Program Standards with the amendments incorporated therein is attached to this Order.

---

1. If any person or group has been overlooked and has an objection to these changes, we can consider their views in subsequent proceedings.

DATED at Montpelier, Vermont, this 11<sup>th</sup> day of October, 2002.

<u>s/Michael H. Dworkin</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: October 11, 2002

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*